



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

August 30, 1984

You request a ruling as to the application of the Massachusetts sales tax and room occupancy excise to meals and rooms provided by ("Hotel") to senior citizen groups. Most of the rooms are rented as lodging, but sometimes the Hotel may rent out a function room to serve a group meal.

You state that most senior citizen groups present the Hotel with a tax-exempt number. You wish to know whether sales to such groups are exempt from both the sales tax and the room occupancy excise.

Chapter 64G, Section 3 of the Massachusetts General Laws imposes a five percent excise tax on the rent charged for any transfer of occupancy in a hotel, lodging house, or motel. In addition, Chapter 546, Section 22 of the Acts of 1969 imposed a surtax of fourteen percent of the tax imposed under Chapter 64G. The total room occupancy excise is thus 5.7 percent of the rent charged.

Chapter 64G, Section 1(e) defines a taxable room occupancy as

the use or possession, or the right to the use or possession, of any room or rooms in a hotel, lodging house or motel designed and normally used for sleeping and living purposes, or the right to the use or possession of the furnishings or the services and accommodations accompanying the use and possession of such room or rooms....

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A room rented for lodging purposes is designed and normally used for sleeping and living purposes. A room rented for the purpose of serving meals to a group is not designed and normally used for sleeping and living purposes.

Chapter 64G, Section 2 excludes from the room occupancy excise

(a) lodging accommodations at federal, state or municipal institutions; (b) lodging accommodations at religious, charitable, educational or philanthropic institutions; (c) privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; (d) religious or charitable homes for the aged, infirm, indigent or chronically ill; and (e) summer camps for children operated by religious or charitable organizations.

Lodging accommodations provided to senior citizen groups by the Hotel are not excluded from the room occupancy excise under Chapter 64G.

Chapter 64H, Section 2 of the Massachusetts General Laws imposes a five percent sales tax on all retail sales of tangible personal property, unless otherwise exempted. Sales of meals provided by any eating establishment are generally subject to the sales tax. (G.L. c. 64H, § 6(h)).

In determining the sales price subject to tax, "the cost of materials used, labor or service cost, interest charges, losses or other expenses" must be included. (G.L. c. 64H, § 1(14)(a)(ii)) (emphasis added). The charge for a room rented for the purpose of serving meals to a group is part of the total cost of providing meals and should be included in the sales price, whether or not it is separately stated.

Chapter 64H, Section 6(e) exempts from the sales tax

[s]ales to any corporation, foundation, organization or institution, which is exempt from taxation under the provisions of section five hundred and one (c)(3) of the Federal Internal Revenue Code, as amended, and in effect for the applicable period; provided, however, that such sales shall not be exempt unless (1) the tangible personal property

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which is the subject of such sales is used in the conduct of such religious, charitable, educational or scientific enterprise, (2) such corporation, foundation, organization or institution shall have first obtained a certification from the commissioner stating that it is entitled to such exemption, and (3) the vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the date of each such separate sale, and the number of such certificate.

Chapter 64H, Section 6(cc) exempts from the sales tax

meals furnished to any organization in which membership is limited to persons sixty years of age or over or to elderly or handicapped persons residing in a housing project qualifying under section thirty-eight to forty, inclusive, of chapter one hundred and twenty-one B and said organization has previously filed with the commissioner, on a form approved by the commissioner, satisfactory proof of its eligibility hereunder....

The following rulings are based on the findings of fact and law as set forth above:

1. The rental of rooms normally used for sleeping and living purposes by the Hotel to senior citizen groups is subject to the room occupancy excise. The rental of a function room for the purpose of serving a group meal is not subject to the room occupancy excise because it is not normally used for sleeping and living purposes.

2. The rental of a function room for the purpose of serving a group meal is included in the sales price of meals and is subject to the sales tax, unless otherwise exempted.

3. The sales of meals by the Hotel to organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are exempt from the sales tax, provided the meals are used in the conduct of the organizations' activities, the organizations have obtained current certifications from the Commissioner, and the Hotel keeps complete records of such meals.

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4. The sales of meals by the Hotel to organizations limited in membership to persons sixty years of age and older or to organizations of elderly or handicapped persons residing in qualifying housing projects are exempt from the sales tax, provided such organizations have filed with the Commissioner satisfactory proof of their eligibility.

Very truly yours,



Commissioner of Revenue

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LR 84-66